

APPEAL NO. 020964  
FILED JUNE 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 28, 2002. The hearing officer determined that the respondent's (claimant) date of maximum medical improvement (MMI) is the statutory date of September 3, 2000, and that the claimant's impairment rating (IR) is 23% in accordance with the designated doctor's second amended report. The appellant (carrier) asserts error in the hearing officer's determination that the IR is 23%. The claimant did not file a response. The hearing officer's MMI determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed, on other grounds.

The hearing officer did not err in determining that the claimant's IR is 23%, consistent with the designated doctor's second amended certification. The carrier asserts that the adoption of the designated doctor's second amended IR certification was improper because spinal surgery was not actively considered at the time of statutory MMI. Whether surgery was actively considered at the time of statutory MMI falls under the rubric of a "reasonable time and proper purpose" analysis. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is considered to have presumptive weight as it is part of the designated doctor's opinion, without regard to whether an amendment was made for a proper purpose or within a reasonable time. See *also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The evidence shows that the designated doctor's second amended report was in response to a request for clarification from the Texas Workers' Compensation Commission. The hearing officer accepted the amended IR and found that it was not contrary to the great weight of other medical evidence. His determination in that regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Thus, the hearing officer did not err in giving the second amended report presumptive weight in finding that the claimant's IR is 23%.

The decision and order of the hearing officer are affirmed on other grounds.

The true corporate name of the carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C.T. CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge